2007-05783/

FOIP FOLIO

SASKATCHEWAN

May 2007

JOB OPPORTUNITIES

Our office is holding an open competition for the vacancies of **Portfolio Officer** and **Manager of Administration.**

The **Portfolio Officer** position reports to the Director of Compliance and is responsible for the examination and resolution of diverse access to information and privacy issues arising from *The Freedom of Information and Protection of Privacy Act* (FOIP), *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), and *The Health Information Protection Act* (HIPA). As a Portfolio Officer, you will monitor compliance with the Acts, mediate between individuals and public sector organizations and health trustees on access and disclosure issues; and generally uphold the access and privacy rights of Saskatchewan residents. You will also promote public awareness through accessible education programs.

Reporting to the Commissioner, the **Manager of Administration** is responsible for managing all the administrative operations of the office, which includes a wide variety of budget/financial, administrative, facilities, human resource, information technology, procurement, communication and liaison functions. The qualifications include considerable directly related experience in budget preparation, human resources, procurement and communication functions. Several years of government experience and excellent skills in Microsoft Windows XP and Microsoft Office are essential. Experience in supervision, website maintenance and records retention and disposal would be an asset.

Please visit our website at www.oipc.sk.ca for a copy of the employment ad and the Position Summary/Responsibilities. You can also view the ad in the *Leader Post* on May 26th and June 2nd or on the Public Service Commission's website at the Career Center (http://www.careers.gov.sk.ca/). The closing date for applications is June 11, 2007.

EDMONTON POLICE SERVICE REQUIRED TO REVEAL OFFICERS' NAMES

Alberta Information and Privacy Commissioner, **Frank Work**, has ordered Edmonton Police Service to disclose the names of officers or other staff who searched an *Edmonton Sun* columnist's name more than 40 times since 1985. The columnist had made an access to information request that had been refused. On appeal to the Commissioner, it was held that "*...the individuals conducting the name search were acting in their representative*

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EDMONTON POLICE SERVICE REQUIRED TO REVEAL OFFICERS' NAMES (cont'd)

capacities with respect to matters in connection with the applicant." The Commissioner's Adjudicator further noted that *"I agree with the applicant's submission that there could not be a reasonable expectation of privacy."* Last November, the Commissioner rejected the Police Service's reasons for refusing to reveal whether or not it held records of police database searches for a lawyer and a journalist. This resulted in two OIPC Orders. The Police Service was ordered by the Commissioner to release the information (see Order F2006-020 available online at www.oipc.ab.ca). The November Orders of that office are F2006-012 and F2006-013

RIGHT TO KNOW ESSAY CONTESTS: TIME IS RUNNING OUT!

For the first time last year, the internationally recognized 'Right to Know' Day (September 28th) was recognized in Saskatchewan.

The purpose is to acknowledge the right of Canadians to access information in the possession or under the control of public bodies, as enshrined in 'freedom of information' laws. Such laws reinforce the accountability of governments and public bodies by ensuring that they operate as transparently as possible. Canada is one of more than 50 nations that have an access to information law. Saskatchewan was the first province in western Canada to enact a comprehensive access and privacy law.

As part of last year's program, the 'Right to Know' Steering Committee announced two essay contests on the topic: *"Why the right of access to information is important in a modern democratic society."* One contest is at the high school level with the other at the university level. Submissions are due June 30, 2007. Prizes will be awarded at this year's 'Right to Know' events during the week of October 1-5, 2007. For more information, visit our website at www.oipc.sk.ca under the *Right to Know* tab.

As with last year's events, we will be working with its steering committee during the week of October 1, 2007 to raise awareness of citizens' rights to government information in the interests of open, accountable and transparent government. If you wish more information about 2007 Right to Know Week events, contact us at (306) 787-8350.

PRIVACY AND PUBLIC LIBRARIES

Now available on our website under the *Resources* tab is a brochure entitled *Privacy for Saskatchewan Public Libraries*. This includes information about relevant laws and a series of questions and answers that address the kinds of issues we hear from Saskatchewan residents. This document owes much to a similar piece done by the Ontario Information and Privacy Commissioner and available on that website.

WEYBURN RBC SHRED-A-THON A RIP ROARING SUCCESS

The Weyburn Branch of the Royal Bank of Canada partnered with Recall North America, a secure information destruction company, to host their first annual RBC Shred-A-Thon. This community event included the opportunity for on-site shredding of documents to prevent identity theft. Both individuals and businesses seized this opportunity to rid themselves of old documents containing sensitive personal information. After viewing the set up, many individuals returned with boxes of personal papers. They watched their documents being shredded before returning home with a new peace of mind that their personal information was no longer at risk. The South East branch of the Saskatchewan Cancer Society returned to their office with a "Certificate of Destruction" stating that the documents had been received and shredded. The RBC also provided cake and hotdogs and iced tea for a toonie with proceeds donated to a local charity. Our congratulations to the RCB on their initiative and commitment to preventing identify theft.

INCOME TAX RETURNS – TOO MUCH INFORMATION

Our government institutions provide valuable services to our residents including the provision of benefit programs which are tied to income. As a matter of course, the government institution must confirm the resident's income in order to determine appropriate benefits. But how do they do that? Can the government institution require income tax returns? In the *Annual Report to Parliament 2001-2002, Part 1*, the Privacy Commissioner of Canada stated:

> *It is unacceptable to me that Canadian citizens should have to provide copies of their personal income tax returns to do business with the Government. Under the Income Tax Act, individuals must divulge a vast amount of personal information when completing their income tax returns, including a good deal of personal information about family members. The income tax process is extraordinarily intrusive and the use of personal information collected for income tax purposes must, in my view, be strictly confined to purposes that are regulated. At a time when Canadians are increasingly concerned about the erosion of their personal privacy, I find it untenable that an income tax return can be demanded from an individual for a purpose other than that required by law. Canadians should never be required to compromise a fundamental right in order to do business with the Government.*

It is a basic principle of access and privacy legislation that the public body collects the least amount of personal information necessary for the identified purpose. The Privacy Commissioner of Canada's approach aligns with this 'need to know' principle. When a public body considers how to confirm income, they must request the least amount of information necessary to meet that goal.

CANADA HEALTH INFOWAY WHITE PAPER ON GOVERNANCE

Earlier this year Infoway produced an updated paper that considers privacy at a macro level and the Electronic Health Record (EHR). This is available online at http://infoway-inforoute.ca/en/ValueToCanadians/PrivacySecurity.aspx.

This document sets out a series of topics related to information governance. The purpose is to:

- describe information governance topics with privacy implications for personal health information (phi) in an interoperable pan-Canadian EHR;
- describe information governance mechanisms currently in use in health care; and
- raise awareness and stimulate action on these topics.

Of particular interest is the discussion on patient control of withdrawing or withholding consent to disclosure of phi (locking data). As Saskatchewan, along with Ontario and Manitoba have a masking or locking provision when it comes to a "comprehensive health record,"[1] the following statement in the document is relevant here:

> *The development of appropriate best practices in relation to lock boxes and the associated information technology standards that will be required to support the practices consistently across jurisdictions will need to be carefully considered by those responsible for EHR Infostructure governance.*[2]

This discussion of consent in Saskatchewan's HIPA will also be of interest to Saskatchewan trustees. It includes the following commentary:

> *It is important to note that the element of "informed consent" in Saskatchewan is a different standard than knowledgeable consent in Ontario. To give informed consent, the Saskatchewan Act states that an individual must be provided with the information that a reasonable person in the same circumstances would require in order to make a decision about the collection, use or disclosure. This includes details such as who has access to the information, for what purposes, what security measures are in place to protect the information and what the risks and benefits are of refusing or consenting to the collection, use or disclosure.*[3]

If you are or work for a health information trustee, you are strongly encouraged to become familiar with this document.

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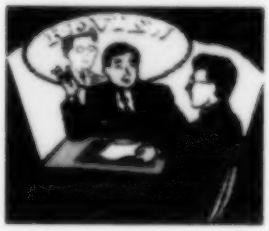
[1] HIPA, s. 8.
[2] Page 11
[3] Page 49

PIPEDA REVIEW BY COMMONS COMMITTEE ON ACCESS TO INFORMATION, PRIVACY & ETHICS



The Standing Committee on Access to Information, Privacy and Ethics has held hearings to review the administration of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) as required by its section 29.

Interestingly, the Committee noted that: "*In particular, it was argued that the Alberta and British Columbia laws, having been drafted subsequent to the Quebec and federal Acts, have had the benefit of drawing upon the Quebec and federal experiences and incorporating enhancements to their legislation.*" Some presenters to the Committee submitted that these "second generation" privacy laws provide a more practical and updated reflection of privacy protection today.

The 25 recommendations include:

- That PIPEDA be amended to include a definition of "work product" that is excluded from the definition of "personal information". (Also discussed in OIPC Report F-2006-001 at [113]) and *Report on The Health Information Protection Draft Regulations*, page 16, both available at www.oipc.sk.ca).

- That PIPEDA be amended to include a provision permitting organizations to collect, use or disclose personal information, without consent, for the purposes of a business transaction.

- That government consult with members of the health care sector to determine the extent to which elements in the *PIPEDA Awareness Raising Tools* (PARTS) document may be set out in legislative form. (See also FOIP FOLIO Feb. 2004, page 4 and www.e-com.ic.gc.ca)

- That the federal Privacy Commissioner be granted authority to cooperate in investigations of mutual interest with provincial counterparts that do not have substantially similar private sector legislation (i.e. Saskatchewan).

- That PIPEDA be amended to include a breach notification provision requiring organizations to report certain defined breaches of their personal information holdings to the Privacy Commissioner.

This Report of the Standing Committee is available online at http://www.parl.gc.ca.

SPEAKING OF ACCESS TO INFORMATION...

Two Assistant Information Commissioners have been appointed by the Government of Canada: **Suzanne Legault** and **Andrea J. Neill**. Their role is to support the work of the new federal Information Commissioner, **Robert Marleau**. Andrea, in her past role as General Counsel, Privacy and Legal Services at the Canadian Institute for Health Information, has shown a keen interest in recent developments in the Saskatchewan access and privacy community.

The Government of Canada has now published draft regulations to amend the *Access to Information Regulations* for comment. The changes reflect the *Federal Accountability Act*, assented to on December 12, 2006. These include limitations in respect of the format in which records are to be provided. The draft regulations can be accessed at http://canadagazette.gc.ca/partI/2007/20070512/html/regle2-e.html.

FEDERAL PRIVACY COMMISSIONER ON IDENTITY THEFT

Commissioner **Jennifer Stoddart** launched a study on identity theft early in May. She proposed that the federal government create a clearinghouse to coordinate the response to and prevention of identity theft. Her proposal for amendment of the federal *Privacy Act* "*to require government institutions to appropriately safeguard the personal information they collect, use or disclose*" closely parallels our recommendation to the Legislative Assembly to do precisely the same thing in both FOIP and LA FOIP. Her news release and the identity theft submission is accessible at http://www.privcom.gc.ca/index_e.asp.

EUROPEAN DATA PROTECTION SUPERVISOR REPORTS

Peter Hustinx, the European Data Protection Supervisor, has published his third annual report on his activities to the European Parliament, the Council and the European Commission. The office is an independent supervisory authority with the task of ensuring that the fundamental rights and freedoms of natural persons, in particular their privacy with regard to the processing of personal data are respected by the institutions and bodies of the European Community. The Report provides an interesting window on the kinds of issues and challenges that his office has dealt with in 2006. The Annual Report is available at http://www.edps.europa.eu/EDPSWEB/webdav/site/mysite/shared/Documents/EDPS/Publications/Annualreport/2006.

UNIVERSITY ENTITLED TO WITHHOLD REFERENCE LETTER

Nova Scotia's new Review Officer, **Dulcie McCallum**, has issued a Report in which she upheld the decision of Dalhousie University to refuse to give the Applicant a copy of the letter provided as part of the selection process for a University Research Professorship.

She also recommended that the University make its policy clearer both in terms of confidentiality and the statutory discretion to withhold the record. The Report includes an interesting discussion of the relevant factors to be considered when a public body exercises its discretion to deny access. Report FI-06-77 is available online at www.gov.ns.ca/foiro/rep_recent.html. The corresponding provision in LA FOIP is section 30(3).

FUTURE EVENTS

May 30-31, 2007 – *Privacy Compliance – Meeting Your Obligations and Challenges* – Toronto, Ontario (contact 1-877-927-7936 or visit www.CanadianInstitute.com for details)

May 31, 2007 – *Newfoundland & Labrador Access and Privacy Workshop, 2007* – St. John's, Newfoundland (visit www.verney.ca/nlapw2007 for details)

June 13-15, 2007 – *Access and Privacy: From Potential to Performance* – Edmonton, Alberta (visit www.accessandprivacy.com for details)

September 20-21, 2007 – *Private Sector Privacy in a Changing World (PIPA Conference 2007)* – Vancouver, British Columbia (visit www.verney.ca/pipa2007/ for details)

September 25-28, 2007 – *29th International Conference of Data Protection and Privacy Commissioners Conference* – Montreal, Quebec (visit www.privacyconference2007.gc.ca for details)

October 1-5, 2007 – *'Right to Know' Week* (details to be announced at a later date)

October 25-26, 2007 – *The Revealed I – a Conference on Privacy and Identity* (visit www.idtrail.org/content/section/11/95/ for details)

TO CONTACT US:

Office of the Saskatchewan Information and Privacy Commissioner
503 - 1801 Hamilton Street
Regina, Saskatchewan, S4P 4B4
Telephone: (306) 787-8350 / Toll Free: 1-877-748-2298
Fax: (306) 798-1603
E-mail: webmaster@oipc.sk.ca
Website: www.oipc.sk.ca

If you wish to subscribe to the Saskatchewan FOIP FOLIO, please send your e-mail address to webmaster@oipc.sk.ca